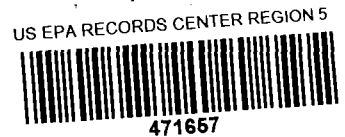


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From: HERSH, STUART (SHERSH)
To: GGINSBER, JLUPTON, LKYTE, MSMITH
Date: Friday, October 9, 1992 1:53 pm
Subject: PPP Certiorari denied



YEA!!!!

We just received word that the Supremes denied PPP and Mike Ladney's Petition for Certiorari. I guess the old saying is true: bad cases make GREAT law.

For your files, this case has given us great law on liability of corporations and individuals, the first RCRA permanent injunctive relief on summary judgment, the remainder of injunctive relief sought through trial, and a \$1.5 million civil penalty. The several opinions that this case has generated provide very useful and favorable language on each of these topics.

Lest opposing counsel in other cases argue that they can marshal equities not available in this case, let them stack their equities against these defendants:

- The \$1.5 million penalty was issued even though defendants spent millions of dollars - - both before and after losing interim status - - on environmental response work. This work included: extensive ground water monitoring; alternate water supplies to neighboring residences; and an expensive purge and treat system (which the State started operating this year).
- For over a decade, defendants have been removing sludge from the surface impoundments and waste pile at the minimum rate required under a State court order (which we have estimated would take 20 years to complete). The State had agreed to this rate of removal in settling its water action against the defendants.
- An EPA ORC attorney informed defendants through a 1986 letter that EPA would accept this snail's pace minimum sludge removal rate required by the State court order as part of a closure plan (which was never approved). The subsequent RCRA State closure plan required roughly 7 months to complete, even though the State court order remains in full force and effect allowing a snail's pace removal.
- The State encouraged defendants (pre-RCRA) to bury masses of sludge in an unlined area on-site.
- The State discharge permit authorized discharge (pre and post-RCRA) of effluent into the seepage lagoon surface

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impoundments.

GOD I LOVE THE LAW!!!!